

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5242 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE A.N.DIVECHA

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes
2. To be referred to the Reporter or not? Yes

J

3. Whether Their Lordships wish to see the fair copy of the judgement? No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No
5. Whether it is to be circulated to the Civil Judge?

No

REJENDRA M MAVANI

Versus

STATE OF GUJARAT

Appearance:

Kum. M.R. Vyas, Advocate, for the Petitioner
Shri A.G. Uraizee, Asst. Govt. Pleader, for
Respondent No. 1
Respondent No.2 served

CORAM : MR.JUSTICE A.N.DIVECHA

Date of decision: 19/09/96

ORAL JUDGEMENT

The decision rendered by the Gujarat Revenue Tribunal at Ahmedabad (the Tribunal for convenience) on 17th April 1996 in Restoration Application No. TEN.D.S. 2 of 1996 is under challenge in this petition under Articles 226 and 227 of the Constitution of India. By its impugned decision, the Tribunal rejected the

application for restoration of Revision Application No. TEN.B.S. 234 of 1990 rejected for default of appearance by its decision rendered on 1st November 1995.

2. It is not necessary to set out in detail the facts giving rise to this petition. It is sufficient to note that the present petitioner preferred the aforesaid revisional application before the Tribunal and it came to be rejected for default of appearance by its decision rendered on 1st November 1995. Its copy is at Annexure A to this petition. The petitioner moved the Tribunal for its restoration to file. A copy of the application of the petitioner in that regard is at Annexure B to this petition. It came to be registered as Restoration Application No. TEN.D.S. 2 of 1996. By its decision rendered on 17th April 1996 in the aforesaid restoration application, the Tribunal rejected it. Its copy is at Annexure D to this petition. The aggrieved petitioner has thereupon approached this Court by means of this petition under Articles 226 and 227 of the Constitution of India for questioning its correctness.

3. The ground given for default of appearance on the part of the learned Advocate for the petitioner before the Tribunal was that he informed the petitioner about the date of hearing but the petitioner did not turn up. The learned Advocate for the petitioner before the Tribunal did not appear before it only on the ground that the petitioner did not turn up in response to the intimation given to him with respect to the hearing of the revisional application. I think the learned Advocate was not justified in not appearing before the Tribunal. He ought to have appeared before the Tribunal and should have reported no instructions from the petitioner. It is however a settled principle of law that no litigant should be let down on account of default, inaction or omission on the part of his advocate in view of the binding ruling of the Supreme Court in the case of Rafiq and another v. Munshilal and another reported in AIR 1981 SC 1400.

4. It was the petitioner's case before the Tribunal in the restoration application that he had not received any intimation from his advocate regarding the date of hearing of his revisional application. It was an undisputed position before the Tribunal that the intimation regarding the date of hearing of the revisional application was sent by the learned Advocate for the petitioner before the Tribunal by ordinary post. It is everyone's common knowledge that the postal department does not guarantee delivery of postal articles

sent by ordinary post. It is possible that the intimation sent to the petitioner by his advocate about the date of hearing of the revisional application might have been lost in postal transit. In absence of any cogent or convincing material on record, there was no reason for disbelieving the case of the petitioner before the Tribunal that he did not receive any intimation from his advocate regarding the date of hearing of his revisional application. It is strange and surprising that the Tribunal has chosen to disbelieve the case of the petitioner in that regard without assigning any good reason. The only reason for disbelieving the petitioner's case is that he is an educated person. I fail to understand what the Tribunal meant by the petitioner's being an educated person for the purpose of disbelieving his case. I wonder whether or not the Tribunal is of the opinion that an educated person is capable of spinning lies and falsehoods in such matters. If that be the approach of the Tribunal, the learned Member of the Tribunal would also be an educated person. I think I need not dilate much upon it. There was no reason to disbelieve the petitioner's case simply because he was an educated person. The approach of the Tribunal in that regard is to say the least highly deplorable. It cannot be sustained in law.

5. In view of my aforesaid discussion, I am of the opinion that the impugned decision of the Tribunal at Annexure D to this petition cannot be sustained in law and it has to be quashed and set aside. The matter has to be remanded to the Tribunal for restoration of the proceeding to file and for its fresh decision according to law in the light of this judgment of mine.

6. In the result, this petition is accepted. The decision rendered by the Gujarat Revenue Tribunal at Ahmedabad on 17th April 1996 in Restoration Application No. TEN.D.S. 2 OF 1996 at Annexure D to this petition is quashed and set aside. The matter is remanded to the Tribunal for restoration of the proceeding to file with the order of grant of interim relief and for its fresh decision according to law in the light of this judgment of mine. Rule is accordingly made absolute to the aforesaid extent with no order as to costs.
